

RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY
RE: FINAL DESIGNATION OF REDEVELOPER, APPROVAL
OF FINAL WORKING DRAWINGS AND PROPOSED
DISPOSITION OF PARCEL C-2-C IN THE DOWNTOWN
WATERFRONT-FANEUIL HALL URBAN RENEWAL AREA,
PROJECT NO. MASS. R-77

WHEREAS, the Boston Redevelopment Authority, (hereinafter referred to as the "Authority"), has entered into a contract for loan and capital grant with the Federal Government under Title I of the Housing Act of 1949, as amended, which contract provides for financial assistance in the hereinafter identified Project; and

WHEREAS, the Urban Renewal Plan for the Downtown Waterfront-Faneuil Hall Urban Renewal Area, Project No. Mass. R-77, (hereinafter referred to as the "Project Area"), has been duly reviewed and approved in full compliance with local, State and Federal law; and

WHEREAS, the Authority is cognizant of the conditions that are imposed in the undertaking and carrying out of urban renewal projects with Federal financial assistance under said Title I, including those prohibiting discrimination because of race, color, sex, religion, or national origin; and

WHEREAS, The Commercial Building Trust has expressed an interest in and has submitted a satisfactory proposal for the development of Disposition Parcel C-2-C in the Downtown Waterfront-Faneuil Hall Urban Renewal Area; and

WHEREAS, the Authority is cognizant of Chapter 30, Sections 61 through 62H of the Massachusetts General Laws, as amended, with respect to minimizing and preventing damage to the environment:

NOW, THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

1. That The Commercial Building Trust be and hereby is finally designated as Redeveloper of Parcel C-2-C in the Downtown Waterfront-Faneuil Hall Urban Renewal Area.
2. That it is hereby determined that The Commercial Building Trust possesses the qualifications and financial resources necessary to acquire and develop the land in accordance with the Urban Renewal Plan for the Project Area.

3. That disposal of said parcel by negotiation is the appropriate method of making the land available for redevelopment.

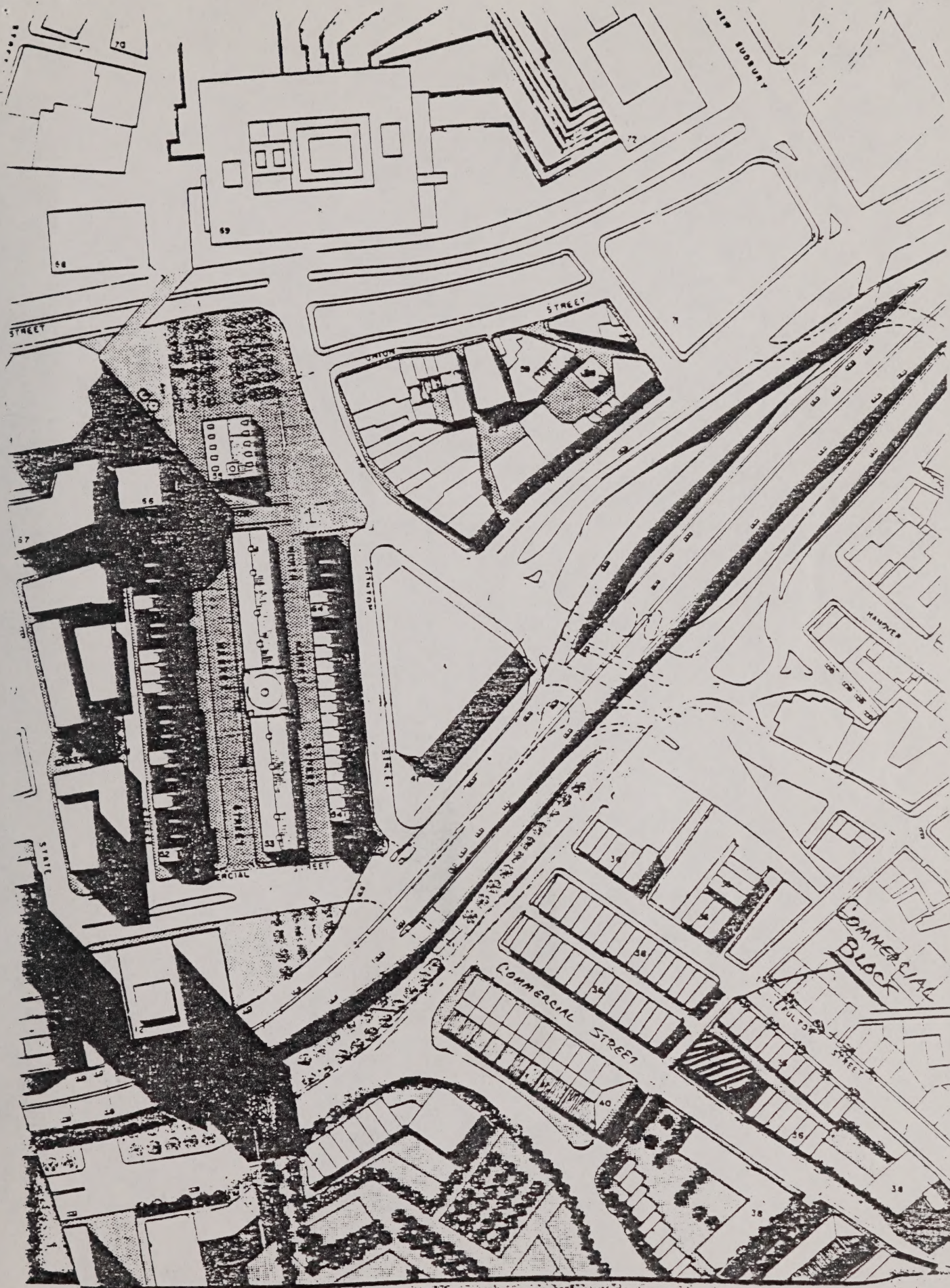
4. That the Final Working Drawings submitted by The Commercial Building Trust for the development of Parcel C-2-C conform in all respects to the Urban Renewal Plan for the Project Area, and that said Final Working Drawings be and hereby are approved.

5. That it is hereby found and determined that the proposed development will not result in significant damage to or impairment of the environment and further, that all practicable and feasible means and measures have been taken and are being utilized to avoid or minimize damage to the environment.

6. That the Director is hereby authorized for and in behalf of the Boston Redevelopment Authority to execute and deliver a Land Disposition Agreement and Deed conveying Parcel C-2-C to The Commercial Building Trust, said documents to be in the Authority's usual form.

7. That the Director is hereby authorized to grant to The Commercial Building Trust, developer of the building proposed for rehabilitation at 126-144 Commercial Street, a temporary License to enter the building for the purpose of securing the property, removal of debris, interior demolition, and the repair of the fire-damaged roof and rear wall. Such License shall be subject to a 30-day notice to vacate the premises; said License is to be for the consideration of One Dollar (\$1.00). Said License is to contain the express provision that no obligation on the part of the Authority direct or indirect is to be construed beyond this temporary month-to-month tenancy. Said License shall also contain the express provision that the Licensee agrees to assume all maintenance expenses including sewer and water charges and Licensee will have the complete responsibilities for compliance with all municipal codes and ordinances. Said License shall further provide that the Licensee shall obtain liability insurance naming the Authority as co-insured and Licensee agrees to indemnify and hold harmless the Authority from any liability and/or damage resulting from the Licensee's use of the premises. Said License to include such other terms and conditions as the Director deems proper and in the best interest of the Authority.

8. That the Secretary is hereby authorized and directed to publish notice of the proposed disposal transaction in accordance with Section 105 (e) of the Housing Act of 1949, as amended, including information with respect to the "Redeveloper's Statement for Public Disclosure". (Federal Form H-6004).



EDWARD H. LINDE
PRESIDENT

October 31, 1978

Boston Redevelopment Authority
City Hall
One City Hall Square
Boston, Massachusetts 02201

RE: Commercial Block Building
Parcel C-2-C
Downtown Waterfront Project
No. Mass. R-77

Gentlemen:

We are pleased to inform you that we have taken all steps necessary to proceed with and complete redevelopment of the Commercial Block Building and, therefore, to request final designation as redeveloper and such other approvals and permission as are necessary for us to continue with and complete the work required for on this project.

As evidence of our conformance with all necessary requirements, we are providing along with this letter the following materials:

1. Final architectural plans (No. A-1 through A-6, dated October 20, 1978) which have received B.R.A. design approval;
2. evidence of financing in the redeveloper, the Commercial Building Trust, sufficient to complete the project; and
3. proposed construction and rental schedules, based on a firm construction contract that has been entered into by Taylor, Woodrow, Blitman Construction Corporation (copy attached).

We are also pleased to inform you that we have already completed the following tasks necessary to bring this project to its present condition that makes successful development possible:

1. Preparation of final working drawings and specifications including review of all design details with the B.R.A. design staff and Boston Landmarks Commission;
2. review of plans with the Massachusetts Historical Commission, and filing of an application with that commission (as agent of the U. S. Department of the Interior) for historic preservation certification of this property;
3. completion of an environmental notification submission to the State Department of Environmental Quality and receipt of a certification that no environmental impact statement is required;
4. drafting, staff review and final submission of a complete 121A Agreement application;
5. a contractor selection (based on competitive bidding with four experienced firms) and execution of a final construction contract based on complete redevelopment plans;
6. all steps necessary for issuance of a building permit, including permit filing, variance hearing with the Boston Board of Appeals, and review of the form and content of the variance approval decision with the legal staff of the Appeals Board. (The Board is scheduled to issue this decision at its next meeting on November 7, 1978); and
7. initiation of actual physical work required (under license and permission granted by the Authority) in order to make construction work possible in the building during the coming winter if we are given the final approvals requested here today.

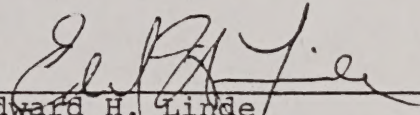
Boston Redevelopment Authority
October 31, 1978
Page 3

As we have noted on the attached construction schedule, we expect to complete construction work on this building in this coming August and to then return this building to active use as part of the very special Boston Waterfront community. We are fully prepared to go forward on this schedule if we receive the necessary approvals from you, and are, of course, happy to answer any questions you may have concerning any aspect of our work on this project.

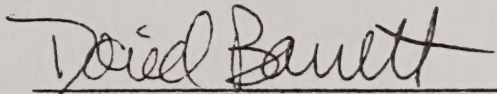
/ksr

Sincerely,

Enclosures



Edward H. Linde
President, Boston Properties



David Barrett
Vice President, Boston Properties
Trustee, Commercial Building Trust

Commercial Block Building
Construction and Rental Schedule
October 31, 1978

Secure building for development	10/16/78
Construction start	11/10/78
Building closed in (rear wall, roof, windows, structural)	1/1/79
Initiate marketing program	4/1/79
Completion of basic struc- tural, mechanical and electrical work	6/1/79
Completion of interior finish work	8/15/79
First tenant occupancy	9/1/79
50% occupancy	10/1/79
80% occupancy	11/1/79
95% occupancy	12/1/79

I hereby certify that the balance sheet of the Commercial Building Trust as of October 31, 1978 included herein has been prepared from the books and records of the Trust in accordance with generally accepted accounting principles.

Oct 31, 1978
Date

Brian C. Badrigian
Brian Badrigian
BOSTON PROPERTIES

COMMERCIAL BUILDING TRUST

BALANCE SHEET

October 31, 1978

ASSETS

U. S. Treasury Bills due November 14, 1978 \$ 1,500,000

(Held at Citibank, 399 Park Avenue,
New York, New York 10022)

\$ 1,500,000

LIABILITIES AND CAPITAL

Beneficiaries' Interests \$ 1,500,000

\$ 1,500,000

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A101

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a

STIPULATED SUM

1977 EDITION

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH
AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION*

Use only with the 1976 Edition of AIA Document A201, General Conditions of the Contract for Construction.

This document has been approved and endorsed by The Associated General Contractors of America.

AGREEMENT

made as of the 18th day of October in the year of Nineteen
Hundred and Seventy Eight.

BETWEEN the Owner:

DAVID BARRETT and ROBERT DeGAETA
Trustees of The Commercial Building Trust
133 Federal Street
Boston, Massachusetts 02110

and the Contractor: TAYLOR WOODROW BLITMAN CONSTRUCTION CORP., a Delaware corporation having a local mailing address at Ten Tremont Street, Boston, Massachusetts 02108.

The Project: The renovation and reconstruction of the existing commercial building numbered 126 Commercial Street, located at the corner of Commercial Street and Richmond Street in Boston, Massachusetts, into 33 apartment units.

The Architect: MINTZ ASSOCIATES, INC.

One Dock Square
16-18 North Street
Boston, Massachusetts 02109

The Owner and the Contractor agree as set forth below.

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ARTICLE 1
THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 7. To the extent there exists an inconsistency in any of the documents comprising the Contract Documents, then the terms and provisions of this Agreement shall, wherever possible, be deemed controlling and shall govern the rights and obligations of the parties hereto.

ARTICLE 2
THE WORK

The Contractor shall perform all the Work required by the Contract Documents necessary for the proper construction and completion of the Work in accordance with the Contract Documents.

ARTICLE 3
TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The work to be performed under this Contract shall be commenced on October 18, 1978, and, subject to authorized adjustments, Substantial Completion shall be achieved not later than ~~August 18, 1979.~~ *Rel DB*
AUG. 23, 1979

The parties recognize and agree that the Contractor is proceeding with construction prior to the Owner's acquisition of the Project site from the BRA and on the basis of a "temporary" building permit, and prior to the granting of the building code variances required before a "final" building permit can issue, at the request and accordingly at the sole risk of the Owner. Accordingly, the parties agree as follows:

3.1 If the Contractor is delayed at any time in the progress of the Work through no act or fault of the Contractor or any subcontractors by reason of (i) interference with the construction of the Project by third parties such as activists, community or other groups of similar or dissimilar nature, except if such interferences is directed at the Contractor (as opposed to the Project) (e.g., community groups as opposed to labor disputes, which shall not be within the ambit of this provision); (ii) for failure of the Owner to have secured building and other permits required in order to permit construction to proceed continuously and without interruption for the lack of any such permits (including without limitation, failure of the Owner to obtain a "final" building permit by December 8, 1978); (iii) the Owner's inability to obtain, or delay in obtaining, other governmental approvals required in connection with the Work (e.g., delays in obtaining BRA and/or historical commission approvals for exterior materials and colors); (iv) the Owner's failure to deliver final construction Drawings and Specifications to the Contractor on or before October 26, 1978 or (v) delay by the Owner in acquiring the Project site from the BRA - then and in any such event, the Contract Time shall be extended pursuant to Article 8.3 of the General Conditions, and the Owner shall reimburse the Contractor for all additional costs and expenses incurred by the Contractor as a result of any such delay, which additional costs and expenses shall be added to the Contract Sum.

*the BRA,

In this connection, the parties recognize and agree that the "temporary" building permit will permit the Contractor to proceed with some but not all phases of the Work; that a "final" building permit will not be issued until after the hearing to be held on or about October 24, 1979 at which the BRA will consider the Owner's request for building code variances required in order for the Work to proceed in accordance with Exhibit A; and that the Contractor anticipates it will be in a position to proceed with portions of the Work not covered by the temporary permit on or about November 10, 1978 (so that the Contractor will be delayed unless a "final" permit is issued or the scope of the "temporary" permit(s) is appropriately expanded by on or about November 10, 1978). The parties further agree that in no event will the Contractor be required to proceed with the Work beyond the scope authorized by any temporary or other permits obtained by the Owner pending issuance of a "final" building permit; and that once the Contractor has completed the work authorized by such "temporary" permit(s), it will not proceed further until an additional "temporary" permit(s) or a "final" building permit is duly issued authorizing additional work.

3.2 If: --

- (a) the Work is stopped or the progress thereof delayed under an order of any court or other public authority having jurisdiction; or
- (b) for failure of the Owner to have secured, to the Owner's satisfaction, certain variances from the provisions of the State Building Code respecting the prosecution of the Work in accordance with the existing Contract Documents, applications for which are now pending a hearing and decision by applicable governmental authority, or
- (c) for failure of the Owner to acquire from the Boston Redevelopment Authority fee title to the property which is the subject of this Contract, or
- (d) for failure of the Owner to have secured building and other permits required in order to permit construction to proceed continuously and without interruption for the lack of any such permits (including without limitation, failure of the Owner to obtain a "final" building permit by December 8, 1978), or
- (e) there is instituted in a court of competent jurisdiction third-party actions which may inhibit continuous prosecution of the Work or which may have the effect of delaying the date for Substantial Completion of the Work,

then, and in any of such events and for so long as such stoppage or delay continues, the Owner and (subject to paragraph 3.4 below) the Contractor shall each have the right to terminate this Contract upon three (3) days' written notice given to the other; and, upon the giving of such notice, this Contract shall be deemed cancelled without further liability or obligation on the part of either party, except as hereinafter set forth. The Contractor shall also have the right to terminate the Contract pursuant to this provision if the Owner fails to deliver final construction Drawings and Specifications to the Contractor on or before October 26, 1978.

3.3 If this Contract be terminated, as aforesaid, the Contractor shall be entitled to recover from the Owner payment (called the "Termination Payment") for:

Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification, or other requirements such as written disclosures or waivers.

- (i) that part of the Work completed but unpaid prior to the date of such termination;
- (ii) materials and equipment suitably stored at the Project site, or at some other location agreed upon in writing, not yet incorporated in the Work, for which and to the extent to which the Contractor has made payment, and for which and to the extent to which prior reimbursement has not been made to the Contractor by the Owner;
- (iii) any retentions then held by the Owner (which shall be paid when the Contractor furnishes such acknowledgments of payment and releases as the Owner may reasonably require pursuant to subsection (iii) of Article 6, which is hereby made applicable to this provision);
- (iv) all verifiable subcontractor costs (including, without limitation, in the term "subcontractor", material suppliers) and costs and expenses in connection with Work (to be) executed and/or materials (to be) fabricated directly by the Contractor (i.e., without subcontractors) incurred by the Contractor from and after the date hereof or to which the Contractor is obligated and for which the Contractor was not previously reimbursed;
- (v) an allowance equal to:
 - (x) the product of twenty (20%) percent (on account of overhead and profit) times the sum of (a) the items listed in subsections (i) through (iv) above plus (b) all other amounts paid by the Owner to the Contractor on account of the Contract Sum,

less
 - (y) any amounts for which the Contractor has been previously reimbursed on account of overhead and profit as shown on the trade payment breakdown to be submitted by the Contractor and approved by the Owner and the Architect pursuant to paragraph 7.5 below;

in no event, however, shall the amount payable pursuant to this subsection (v) exceed \$100,000; and

- (vi) one-half (1/2) of the amount expended by the Contractor for engineering staff time applicable to the work undertaken on account of the Project up to and including the date hereof (computed at the rate of two (2) times salary), plus out-of-pocket expenses incurred by the Contractor incident thereto, up to an amount not to exceed \$5,000 in the aggregate.

In this connection, the parties acknowledge and agree that the Contractor will now be ordering materials and letting subcontracts for portions of the Work beyond the scope of the "temporary" permit pursuant to which the Contractor will commence construction; and that in the event this Contract is terminated in accordance with the foregoing, the Contractor will be entitled to recover for any proven loss with respect thereto in accordance with the foregoing. The Contractor does agree, however, that it will use reasonable efforts to include the following provision in all purchase orders over \$1,000 executed under Contractor's subcontract form and in all subcontracts:

"The Contractor shall have the right, in the event of termination of the Agreement between the Owner and Contractor for any cause at any time, to cancel this Subcontract and require the Subcontractor to cease work thereon, in which case the Contractor shall compensate the Subcontractor based on the contract amount pro rata for work already performed but not against any damage resulting from cancellation and the Subcontractor shall not be entitled to compensation, for prospective profits or material unfurnished."

If the Contractor is unable to include said provision in any such purchase order or subcontract, the Contractor shall notify the Owner thereof at least forty-eight (48) hours prior to the Contractor signing any such purchase order or subcontract, so that the Owner (if it so desires) will have the opportunity to recommend an alternative supplier or subcontractor (as the case may be). Such recommendation(s) by the Owner shall not, however, be binding on the Contractor.

The Owner shall make payment to Contractor within fifteen (15) days after the Contractor presents a statement therefor to the Owner. The Contractor agrees with the Owner that, if this Contract is terminated as aforesaid, and if the Owner timely makes the payments above enumerated, then this Contract shall be terminated without recourse and without further obligation or liability by either party hereto.

3.4 Notwithstanding anything to the contrary contained in paragraph 3.2 above, the Contractor shall not have the right to terminate this Contract pursuant to the foregoing unless the Work is stopped or the progress thereof delayed for a period of at least sixty (60) days. Moreover, provided the Owner is diligently pursuing appropriate action to remove the cause of any such Work stoppage or delay (e.g., by appealing an adverse governmental decision(s)) - and provided the Owner continues diligently to pursue such appropriate action thereafter - the Owner shall have the right to extend such sixty-(60)-day period for up to an additional ten (10) months (i.e., until one year after the commencement of the Work stoppage or delay) by making the Termination Payment to the Contractor by the later of (i) sixty (60) days after the commencement of such Work stoppage or delay or (ii) fifteen (15) days after the Contractor presents a statement therefor to the Owner. In the event the Work is resumed thereafter and this Contract is not terminated as aforesaid, the Termination Payment (if paid by the Owner to the Contractor) will be applied on account and in reduction of the Contract Price (as the same may be increased pursuant to paragraph 3.1 or otherwise).

3.5 Anything in the Contract Documents to the contrary contained notwithstanding, in no event shall the Work be deemed substantially complete until all of the Contractor's Work reflected in the Drawings and Specifications and required for the issuance of a Certificate of Occupancy shall have been completed (except to the extent any of the Work cannot be completed pending completion of other items which are not within the Contractor's Work as set forth in the Drawings and Specifications - e.g., the Work may be deemed substantially completed even if the building plumbing system is not functional if it is not functional solely because permanent connections to the municipal

water and/or sewerage systems, which is not within the Contractor's Work, have not been made). In no event will the Work be considered not substantially completed on account of a Certificate of Occupancy not having been issued if the Certificate of Occupancy is not issued solely because items not the Contractor's responsibility under the Drawings and Specifications remain to be completed.

ARTICLE 4 CONTRACT SUM

- 4.1 The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of One Million Two Hundred ~~Forty-Six~~ ^{Eighty} Thousand ~~Five~~ ^{Five} Hundred ~~Eighty~~ ^{Eighty} (\$~~1,245,500~~ ^{1,256,430}) Dollars, which Contract Sum shall include all sales, consumer use and other similar taxes required by law. *Handwritten initials: RL, RL, RL*
- 4.2 Reference is made to the fact that the drawings and specifications enumerated in Exhibit A hereto are not final working drawings and specifications. The Owner and the Architect shall be responsible for the development and preparation of final construction plans and specifications (called "Drawing and Specifications") based on the drawings and specifications enumerated in Exhibit A; and the Contractor, the Owner and the Architect shall coordinate with each other in order to assist in the orderly development of the construction Drawings and Specifications. The final construction Drawings and Specifications shall be delivered by the Owner to the Contractor on or before October 26, 1978. Owner shall deliver to the Contractor ten (10) copies of the Drawings and Specifications plus one (1) complete set of sepias therefor.
- 4.3 However, unless the cost of the Work shall be affected by any departure of the final working Drawings and Specifications from the drawings and specifications described in Exhibit A hereto, it is agreed that the Contractor shall have no claim for an increase in the Contract Sum as a result of the final working Drawings and Specifications reflecting changes from the drawings and specifications described in Exhibit A hereto. If, however, the final working Drawings and Specifications reflect changes affecting the cost of the Work, then (subject to paragraph 4.4 below) the Contract Sum shall be increased or decreased accordingly. Whether or not any such change affects the cost of the Work, as well as the amount of any such increase or decrease, shall be agreed upon mutually by the Owner and the Contractor or, failing such agreement, shall be determined by the Architect, whose decision shall be binding and conclusive upon the Owner and the Contractor in the absence of bad faith or collusion between the Architect and the Owner, or between the Architect and the Contractor. Increases in the cost of the Work shall be subject to the allowance for overhead and profit with respect to other Change Orders set forth in Article 7.12 below. The Contract Time shall also be subject to appropriate extension where any such changes from the Exhibit A plans and specifications to the final Drawings and Specifications will cause a delay in the Work or require more time for the performance thereof.
- 4.4 Notwithstanding anything to the contrary contained in paragraph 4.3 above, it is agreed that the Contractor shall have no claim for an increase in the Contract Sum as a result of the final working Drawings and Specifications reflecting (i) clarifications from the drawings and specifications described in Exhibit A hereto which complete previously incomplete information in a manner to be reasonably anticipated (e.g., a bedroom door opening not shown on the Exhibit A plans; a finish not shown on the Exhibit A plans which is consistent with other finishes shown therein); or (ii) modifications from the drawings and specifications described in Exhibit A which are required to coordinate the work of all trades in a manner to be reasonably anticipated (e.g., if an Exhibit A

plan shows a wall air conditioning unit, then it is to be reasonably anticipated that there must be an opening therefor in the exterior wall, even if such opening is not shown on the Exhibit A exterior wall plan(s)).

ARTICLE 5

PROGRESS PAYMENTS

Based upon Applications for Payment, which shall be in the form set forth in Exhibit B (annexed hereto and hereby made a part hereof) and which shall be submitted to the Architect (with a copy to the Owner) by the Contractor on or before the fifth (5th) day of each month, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents for the period ending the last day of the preceding month as follows: Not later than ten (10) days following the Contractor's submission of the Application for Payment to the Architect and the Owner as aforesaid, Ninety (90%) percent of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated in the Work and Ninety (90%) percent of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner. When Certificates of Payment have been issued for fifty (50%) percent of the Contract Sum, said 90 percent figures shall be increased to One Hundred (100%) percent with respect to all further progress payments to be made thereafter; and the Owner shall pay the Contractor, upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to Ninety-Five (95%) percent of the Contract Sum, less such amounts as the Architect shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents.

Payments due and unpaid under the Contract Documents within ten (10) days of the due date thereof shall bear interest from the date payment is due at the rate of one (1%) percent above the so-called "prime" rate of interest from time to time charged by The First National Bank of Boston.

ARTICLE 6

FINAL PAYMENT

Final payment shall be due forty-five (45) days after Substantial Completion of the Work, provided (i) the Work be then fully completed and this Agreement fully performed, subject only to the withholding of two (2) times the dollar value, as determined by the Architect, of such minor items as are customarily included in a "punch-list" so-called, as prepared by the Architect (which sums shall be paid to the Contractor from time to time upon certification of completion of each item by the Architect), (ii) the Architect has issued a final certificate for payment (subject to said "punch-list", if any), and (iii) there has been delivered such instruments and documentation as may be required reasonably by the Owner evidencing the payment of all sums due the Contractor, any subcontractor, materialman or workman, and such instruments releasing the Owner

from all claims of the Contractor, and anyone claiming by, through or under the Contractor, arising out of, or in connection with, the Work,* and wherein the Contractor undertakes to indemnify the Owner and hold it harmless from any liability to the Contractor for the Work performed hereunder/*. No payment under this Agreement is intended nor shall it be construed as evidence of performance of this Agreement, either in whole or in part, and no payment including the final payment shall be construed to be an acceptance of defective Work or improper materials.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

7.2 The Contract Documents, which constitute the entire agreement between the Owner and the Contractor, are listed in Article 1 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

- (i) This Agreement AIA Document A101, 1977 Edition (as herein modified);
- (ii) General Conditions of the Contract for Construction AIA Document A201, 1976 Edition, as modified on the face thereof;
- (iii) Exhibit A and the drawings, outline specifications, and other qualifying documentation enumerated therein;
- (iv) Final Drawings and Specifications, to be prepared by the Owner and Architect, and delivered to the Contractor, on or prior to October 26, 1978, in accordance with, and based upon, the plans and specifications enumerated in Exhibit A hereto; and
- (v) Exhibits B, C and D annexed hereto and made a part hereof.

7.3 Subject to loss or damage caused by any peril(s) required to be covered by the Owner's Builder's Risk Policy, provision for which is hereinafter made or caused by Owner, its employees, tenants, or others (except the Contractor) claiming by, through or under Owner: the Contractor shall be responsible for the proper care and protection of all portions of the Work until the completion and acceptance of the Work in its entirety and the Work shall be delivered at completion in an uninjured condition.

The Contractor shall purchase and maintain insurance, in amounts and with companies satisfactory to the Owner, as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under this Agreement, whether such operations be by the Contractor or by any subcontractor to the Contractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, as follows:

- a) insurance under statutory workmen's compensation laws and employer's liability insurance;
- b) comprehensive general liability insurance for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees, including, where applicable to the Work under this Agreement explosion and collapse hazard and underground hazard (XCU) coverage;

*except with respect to such "punch-list" items and amounts withheld with respect thereto

- c) insurance for damages insured by personal injury liability coverage which are sustained (i) by any person as a result of an offense, directly or indirectly relating to the employment of such person by the Contractor, or (ii) by any other person; liability
- d) /insurance for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom, and broad form property damage coverage;
- e) insurance for bodily injury liability or death to any person, or damage to property, arising out of operation of motor vehicles, including coverage for all owned vehicles, hired cars, truck and employer's non-ownership; and
- f) completed operations coverage, so-called.

The insurance required above shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater, shall wherever applicable name the Owner (and such other persons as are in privity of estate with the Owner as may be set out in notice from time to time) as an insured, be endorsed in the broadest form of such coverage from time to time available in the jurisdiction in which the Project is located, and under which policies the insurer agrees to indemnify and hold the Owner, and those in privity of estate with Owner, harmless from and against all costs, expenses or liability arising out of or based upon any and all claims, accidents, injuries and damages mentioned in the immediately succeeding paragraph. Certificates of insurance acceptable to the Owner, substantially in the form of Exhibit C annexed hereto and hereby made a part hereof, shall be filed with the Owner prior to the commencement of the Work evidencing premiums paid, which certificates, bearing the signature of an authorized agent, shall contain a provision that coverages afforded under the policies will not be cancelled until at least thirty (30) days' prior written notice has been given to the Owner. If the Contractor shall fail to deliver certificates for such insurance prior to the commencement of Work on the Project site, the Owner may, Obtain such insurance for the Contractor and pay the premiums thereon, and the Contractor shall repay the Owner, on demand, any sum or sums paid therefor, or the Owner may deduct such premiums from any money due or to become due the Contractor under this Agreement.

The Contractor shall indemnify and save the Owner harmless from and against all claims of whatever nature arising from any act, omission or negligence of the Contractor, or Contractor's subcontractors, licensees, agents, or employees, or arising from any accident, injury or damage whatsoever caused to any person, or to the property of any person, in consequence of the performance of the Work for so long as this Agreement is in force and effect, in or about the Project site or arising from any accident, injury or damage occurring outside of the Project site, where/** such accident, injury or damage results or is claimed to have resulted from an act or omission on the part of Contractor or Contractor's agents, employees or independent subcontractors. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof with counsel acceptable to the Owner.

Any policy of insurance covering the Contractor's own tools, plant and facilities against loss by physical damage shall include an endorsement providing that the underwriters waive their rights of subrogation against the Owner. ||

*after notice to the Contractor,

**in each case

7.4 The owner shall maintain Builder's Risk Completed Value Insurance on an All Risk type form upon all work in place and all materials stored at the project site to the full replacement value thereof subject to \$1,000 deductible (except \$25,000 deductible Floor and Earthquake) and for which such deductible, Owner shall be responsible. Sub limit on theft is \$50,000 and on Flood and Earthquake \$500,000. Such insurance shall protect the interest of the Owner, all contractors and subcontractors performing work at the Project site and any mortgagee of the Owner, which policies may be deposited with the holder of a mortgage on all or any part of the Project site, and the proceeds in case of loss may be held by such mortgage holder and applied by it in the manner provided in any loan agreement entered into between the Owner and such mortgage holder. The Owner shall have power to adjust and settle any loss with the insurers, using due diligence to protect the interests of the Contractor. The Owner and the Contractor hereby waive all rights they may have against one another and against Contractor's subcontractors for damages caused by fire or other perils required to be covered by the Owner's builder's risk insurance, as aforesaid. Owner's Builder's Risk policy shall include an endorsement providing that the underwriter(s) waive their rights of subrogation against Contractor and its subcontractors. A certificate(s) of such insurance acceptable to the Contractor shall be filed with the Contractor prior to the commencement of the Work evidencing premiums paid, which certificate(s) bearing the signature of an authorized agent, shall contain a provision that coverages afforded under the policy(ies) will not be cancelled until at least thirty (30) days' prior written notice has been given to the Contractor. If the Owner shall fail to deliver a certificate(s) for such insurance prior to the commencement of Work on the Project site, the Contractor may, upon notice to the Owner, obtain such insurance for the Owner and pay the premium(s) thereon, and the Owner shall repay the Contractor, on demand, any sum or sums paid therefor, in addition to the Contract Sum.

7.5 Prior to its first monthly requisition, the Contractor shall submit a detailed estimate breakdown showing the subdivisions of the Contract Sum into its various component parts, which breakdown is to be subject to the Owner's and the Architect's approval and is to be used for checking the Contractor's monthly Applications for Payment.

7.6 In the event that any lien, chattel mortgage or conditional bill of sale shall be filed by any party claiming by, through or under the Contractor against the Owner's real estate, which lien, chattel mortgage or conditional bill of sale involves claims against the Contractor, or the person claiming by, through or under the Contractor, the Contractor shall promptly remove or discharge such lien, chattel mortgage or conditional bill of sale by bonding, payment or otherwise; and if the Contractor shall fail to so remove or discharge the same within five (5)*days after notice from the Owner, the Owner shall have the right to remove or discharge the same by bonding, payment or otherwise, in its sole discretion, for the account of the Contractor. The amount of any payment, costs and expenses made or incurred by the Owner in connection with the removal or discharge of any lien, chattel mortgage or conditional bill of sale, as aforesaid, may be deducted by the Owner from any payment or amounts then due or thereafter to become due to the Contractor or retained by the Owner as aforesaid. If any amount retained by the Owner, or any payment or payments due to the Contractor and unpaid shall not be sufficient to remove or discharge any lien, chattel mortgage or conditional bill of sale, or to reimburse the Owner its costs and expenses in connection therewith, or if the Contractor shall have been fully paid, the Contractor shall pay the amount of such deficiency and the Owner's costs and expenses in connection therewith to the Owner, on demand.

*business

DB (1)

The provisions of the foregoing paragraph shall in no event prohibit the right given by statute to the Contractor to file a notice of contract or the like and to maintain any claim against the Owner's real estate or improvements for on account of any work done, labor performed or materials furnished in the event of non-payment or other default of the Owner to the Contractor under this Agreement; provided, however, that such notice of contract, etc. shall in all respects be subject and subordinate to the lien of a mortgage as may be placed upon the real estate and improvements comprising the Project by the Owner and to all advances which may be made thereunder, such agreement of subordination to be in form satisfactory to the holder of such mortgage.

7.7 The General Conditions provide for the resolution of all disputes and claims between the parties by arbitration. Notwithstanding the fact that the General Conditions contemplate resolution of all disputes by arbitration, the Owner and the Contractor do hereby agree as follows:

- a) In the event of a monetary dispute or claim in excess of \$10,000., such dispute or claim shall be resolved by arbitration only if the parties agree to submit the matter to arbitration in accordance with the Contract Documents.
- b) If the parties do not agree to submit such economic claim or dispute involving a sum in excess of \$10,000. to arbitration, then the arbitration provisions of the Contract Documents shall not be applicable to that dispute, and either party shall be entitled to commence and prosecute litigation in the Superior or other Court of competent jurisdiction. In the event of such litigation:
 - i) it is agreed and stipulated (and a condition precedent to the waiver of arbitration) that the disputed matter shall be referenced by the Court to a Master, in accordance with Rule 53(b) of the Massachusetts Rules of Civil Procedure (or its counterpart under the Federal Rules of Civil Procedure) as now promulgated; and that
 - ii) the Master's findings of fact shall be final, in accordance with Rules 53(e)(2) and 53(e)(4) (or counterparts under the Federal Rules of Civil Procedure) as now promulgated.
- c) The parties hereto shall, and they hereby do, waive trial by jury in any judicial action or proceeding commenced and duly prosecuted in accordance with the provisions of this Subparagraph 7.10, and if the Court should fail to reference a disputed matter to a Master, notwithstanding the stipulation of Clause i) of Subparagraph 7.10b) above, then any questions of law and fact shall be tried before the Judge without a jury.
- d) It is further understood that any monetary dispute or claim for \$10,000. or less and all non-economic disputes and claims shall be resolved by arbitration.

If a party institutes litigation under Subparagraph 7.10b) herein, and a judgment is entered in those proceedings for less than \$10,000., the Court may order all or part of the costs of litigation against the party who asserted the claim, if the Court finds that the amount of the claim was inflated to avoid arbitration, was frivolous, or was otherwise not made in good faith.

7.8 No assignment of this Agreement or of any money due or which may become due hereunder shall be made by the Contractor without the written consent of the Owner. Any assignment of this Agreement or of money due or to become due under this Agreement made by the Contractor without the written consent of the Owner, shall be null and void, and the assignee shall acquire no rights against the Owner.

The Owner shall be entitled to assign its rights and obligations hereunder to any mortgagee who may from time to time hold a mortgage on all or any portion of the Project site, and the Contractor will, at the request of any such mortgagee, accept the mortgagee in substitution for the Owner hereunder, so long as the payments required to be made to the Contractor are made in accordance with the terms of this Agreement. However, until such mortgagee shall, in writing, assume the Owner's obligations under this Agreement, any such assignment shall not operate as a substitution of such mortgagee for the Owner, and the Contractor shall have no right to look to such mortgagee for performance of the Owner's obligations hereunder unless and until such mortgagee elects, in writing as aforesaid, to be substituted for the Owner hereunder and requests the Contractor to complete its Work in accordance with this Agreement for such mortgagee's account. No such assignment, acceptance and/or assumption shall relieve the Owner and Guarantors of their primary liability to the Contractor hereunder and under the Guarantee attached hereto.

7.9 The Contractor is familiar with all provisions of the Contract Documents /* regarding Equal Employment Opportunity, which are a part hereof, and with the Fair Labor Standards Act, in relation to wages and hours, and where such Act applies to the Work, the Contractor shall comply with the terms and provisions thereof and shall hold the Owner harmless for all loss, liability and expenses arising out of any violations of said provisions or Act by the Contractor. The Contractor shall comply with the portions of the Owner's Land Disposition Agreement with the Boston Redevelopment Authority ("BRA") set forth in Exhibit D attached hereto and made a part hereof, insofar as said provisions are applicable - and the same hereby are made applicable - to the performance of the Work by the Contractor hereunder.

7.10 In executing the Work, the Contractor shall comply in every respect with all Federal, State and Municipal laws, codes, ordinances and regulations relating to the performance of the Work (e.g., OSHA, Equal Employment Opportunity, etc.). Nevertheless, subject only to the Contractor's obligations under 4.7.3 and 4.7.4 of the General Conditions: The Contractor shall perform the Work in accordance with the Drawings and Specifications, notwithstanding any other obligations which may be imposed by local zoning codes and other requirements not specifically indicated on the Drawings and Specifications. It is understood and agreed that the Contractor shall have no obligation to perform work not indicated on the Drawings and Specifications, unless a Change Order is effected for such extra work. It is further understood and agreed that, although the Contractor will make the submissions to the City of Boston and other governmental authorities having jurisdiction for all necessary building permits and the like required in connection with the Work, the Contractor is and will be relying upon the Architect (and the Contractor is not responsible) for the final responsibility for insuring that the Drawings and Specifications are in full and complete compliance with all applicable laws, ordinances, regulations, building and environmental codes, zoning codes, BRA requirements, historic commission requirements and Building Codes in force in the City of Boston, etc. If and whenever variances from or waivers of requirements of Zoning and Building Codes, fire laws, and/or other laws, rules, regulations, etc. are necessary, it shall be the responsibility of the Owner and/or

*(other than the final Drawings and Specifications which have yet to be delivered by the Owner and the Architect to the Contractor).

the Architect to procure and/or obtain the same; without limiting the foregoing (and notwithstanding anything to the contrary contained in 4.7.2 of the General Conditions), the Owner and/or the Architect shall be fully responsible for obtaining all requisite BRA approvals in connection with the Project. The Owner shall be solely responsible for the payment of all fees, etc. for building permits and the like and for the cost of all testing, inspections, and other back-up data required in connection therewith. In addition, subject only to the Contractor's responsibilities under Section 4.2.1 of the General Conditions, the parties agree and acknowledge that the design responsibility for the Project shall be borne solely by the Architect.

7.11 If due to the fault of the Contractor, the Contractor fails to substantially complete the Work within the Contract Time (as the same may be extended), the following amount shall be deducted from the Contract Sum as liquidated damages (and as the Owner's only damages for delay in substantial completion of the Work by the Contractor) for each day substantial completion of the Work is delayed beyond the expiration of the Contract Time (i.e., beyond August 23, 1979, as said date may be extended): the product of (i) \$18.42 times (ii) the number of apartment units not yet substantially completed on each such day after the expiration of the Contract Time, up to a maximum amount of \$700 per day. (E.g., assuming said August 23, 1979 date is not extended: If five units remain not substantially completed at the end of the day, on August 23, 1979, \$92.10 shall be deducted from the Contract Sum as of August 24, 1979; if two of those units are completed on August 24, 1979, an additional \$55.26 shall be deducted from the Contract Sum as of August 25, 1979 for the three units still not completed; if the remaining three units are substantially completed on August 27, 1979, an additional \$110.52 shall be deducted from the Contract Sum with respect thereto for August 25-26.) If said liquidated damages amount computed as aforesaid exceeds the balance of the Contract Sum then due the Contractor under this Contract, the Contractor shall promptly pay such excess to the Owner.

As an incentive to the Contractor to complete the Work prior to August 23, 1979 (as said date may be extended), the parties agree that the Contract Sum shall be increased by \$150 per unit per month, for each calendar month prior to the month in which the Contract Time (as the same may be extended) expires, that a unit is substantially completed, with receipt of a Certificate of Occupancy with respect thereto (or completion of all of Contractor's Work required for the issuance of a Certificate of Occupancy with respect thereto) and the Architect's approval thereof, up to a maximum increase of \$15,000 total. (E.g., assuming said August 23, 1979 date is not extended: If a unit is substantially completed as aforesaid at any time in July, 1979, the Contract Sum shall be increased by \$150 with respect to that unit.) Credit to Contractor to be calculated from the first of the following month. *Avy DB*

7.12 Notwithstanding anything to the contrary contained in Article 12 of the General Conditions, the Contractor shall be paid the following amount with respect to Change Orders which result in an increase in the cost of the Work:

- (i) If the Change Order is made after October 26, 1978, then:
 - (a) If the cost of the Change Order is over \$5,000, the Contractor shall be paid an amount equal to the cost thereof, plus an allowance of ten (10%) percent for overhead and five (5%) percent for profit;
 - (b) If the cost of the Change Order is \$5,000 or less, the Contractor shall be paid an amount equal to the cost thereof, plus an allowance of ten (10%) percent for overhead and ten (10%) percent for profit.

- (ii) if the Change Order is made prior to October 26, 1978, then the Contractor shall be paid an amount equal to the cost thereof, plus an allowance of ten (10%) percent for overhead and profit.

The Owner shall pay the Contractor for Change Order work based upon Applications for Payment submitted by the Contractor and Certificates of Payment therefor issued by the Architect in accordance with the procedures set forth in Article 5, subject to the retainage and final payment provisions of Articles 5 and 6 but calculated separately for each Change Order (i.e., prior to 50 percent completion of each Change Order item, it will be subject to a 10 percent retainage; thereafter, there shall be no retainage with respect thereto).

7.13 The Contractor shall have the right to perform portions of the Work off site, at the election of Contractor.

7.14 The Contractor, being fully responsible for the general management of the Project construction, shall have full authority over the execution of all subcontracts. All payments due to the Contractor must be made directly to the Contractor pursuant to written Applications for Payment only. Monies owed the Contractor shall not be paid directly to a subcontractor or material supplier, except pursuant to court order final and beyond appeal by a court of competent jurisdiction.

7.15 Notwithstanding anything to the contrary contained in Article 13.2.2 of the General Conditions: The parties agree that if any portion(s) of the Work are used for their intended purpose by Owner or Owner's tenants, prior to Substantial Completion of all of the Work, then with respect to the portion(s) of the Work so used, the one-year period provided for in Article 13.2.2 of the General Conditions shall run from the date of such beneficial use, rather than from the date of Substantial Completion of all of the Work.

7.16 If any damage to the Work as a result of fire or other casualty is such that a mortgagee will not make the proceeds of any insurance available for restoration, or if the proceeds of such insurance, plus the amount of the deductible thereon (which is to be paid by the Owner) are insufficient to cover the cost of restoration, then the Owner may, upon seven (7) days' written notice to the Contractor given within thirty (30) days after such fire or other casualty, terminate the Contract. Upon any such termination, the Contractor shall be entitled to recover from the Owner payment for all Work executed (including any retentions held with respect thereto) and for any proven loss sustained upon any subcontracts, materials, equipment, tools, construction equipment and machinery, including reasonable overhead and profit and damages. Unless the Owner elects to terminate the Contract within the 30-day period following such fire or other casualty as aforesaid, the Owner shall be obligated to fund any such lack of insurance proceeds due to the unavailability or insufficiency thereof or otherwise.

7.17 A) The Contractor shall not display any signs, posters or other advertising material on or around the Project or the Project site, without the written permission of the Owner.

~~B) In performing the work, the Contractor shall comply in every respect with all Federal, State and Municipal laws, codes, ordinances and regulations relating thereto. Contractor agrees that all its personnel and workmen, while on or about the Project site, will be provided by the Contractor with, and will wear, hard hats~~

B) Notices or communications permitted or required hereunder shall be in writing, sent by registered or certified mail, postage prepaid, at the address set forth on the first page of this Agreement for each of the Owner and the Contractor (or to such other address or addresses as any party may from time to time hereafter designate to the others by like notice).

C) If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

D) This Agreement constitutes the entire agreement between the parties hereto and cannot be amended, modified or changed except as herein provided, nor can the provisions of this Agreement be waived except by an express waiver in writing. All prior understandings, agreements, correspondence, quotations or other communications, whether oral or written, are superseded and annulled by this Agreement, and this Agreement contains the entire understanding between the Owner and the Contractor.

E) Except as herein otherwise expressly provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of the Owner and the Contractor and, if the Contractor shall be an individual, upon and to his heirs, executors, administrators and assigns. The reference contained to successors and assigns of the Contractor is not intended to constitute a consent to assignment by the Contractor, but has reference only to those instances in which the Owner may later give consent to a particular assignment by the Contractor of this Agreement.

F) The Contractor agrees that the Owner shall not be personally liable for any obligation, express or implied, under this Agreement, including, without limitation, any trustee of the Owner, or any of the beneficiaries for whom such trustee holds record title to the real estate upon which the Project is to be constructed; and the Contractor agrees to look solely to the equity interest of the Owner in the Project for the performance of any obligation of the Owner to be performed under this Agreement. Nothing contained in the foregoing, however, shall diminish or otherwise affect the joint and several personal liability of each of the Guarantors under the Guarantee attached hereto.

*the Architect

G) This Agreement shall be governed exclusively by the provisions hereof and by the law of the State in which the Project is located, as the same may from time to time exist.

IN WITNESS WHEREOF, the Owner and the Contractor have executed this Agreement, under seal, by persons or officers hereunto duly authorized, as of the day and year first above written.

OWNER: THE COMMERCIAL BUILDING' TRUST

In the presence of:

John Ciccardi

By: David Barrett
David Barrett
Robert DeGaeta
Robert DeGaeta

As Trustees as Aforesaid and Not Individually,
Nor on Behalf of Individual Beneficiaries

CONTRACTOR:

TAYLOR WOODROW BLITMAN CONSTRUCTION CORP.

In the presence of:

John Ciccardi

By: Harold G. Basser
Name: Harold G. Basser
Office: Vice President
Hereunto Duly Authorized

[Corporate Seal]

November 2, 1978

MEMORANDUM

TO: THE BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: DOWNTOWN WATERFRONT-FANEUIL HALL URBAN RENEWAL PROJECT
FINAL DESIGNATION OF DEVELOPER
PARCEL C-2-C COMMERCIAL BLOCK BUILDING
126-144 COMMERCIAL STREET
LICENSE FOR EARLY CONSTRUCTION

3684
11/2

The Authority, at a meeting held on July 7, 1977, tentatively designated The Commercial Building Trust as developer of the Commercial Block Building at 126-144 Commercial Street. At the last meeting of the Authority on October 19, 1978, the Board authorized a two-week license to enter the building for the purpose of securing the property.

The developer has now submitted final architectural plans which have been approved by staff and has submitted a letter indicating that they have the required financing for redeveloping the Commercial Block Building.

Since the developer is now prepared to proceed with construction, it is recommended that the Authority finally designate The Commercial Building Trust as developer of Parcel C-2-C in the Downtown Waterfront Project and also approve final plans for that development. In addition, it is also recommended that the Authority authorize the Director to execute and deliver a license for early construction to The Commercial Building Trust allowing them, their employees, contractors, sub-contractors and agents to enter upon the premises located at 126-144 Commercial Street and designated as Parcel C-2-C in order to begin construction in accordance with approved final plans.

An appropriate Resolution is attached.